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December 8, 2017

Via email: Minister@cic.gc.ca

The Honourable Ahmed Hussen, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Minister:

Re: Government Report on Immigration Consultants

The Immigration Law Section of the Canadian Bar Association (CBA Section) is writing to comment on the Government Response to the Citizenship and Immigration Committee Report, *Starting Again: Improving Government Oversight of Immigration Consultants*,¹ presented to the House of Commons in October 2017.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing all areas of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad.

The CBA Section applauds the federal government's commitment to addressing the inadequate public protection from cases of unprofessional or unethical conduct by immigration consultants, as well as its commitment to improving client services. We also appreciate that the Government Response does not refer to immigration consultants as engaging in the 'practice of law.' The Report's use of this terminology is incorrect and misleading to the public.

We disagree, however, with the government's view that a strong system of oversight for immigration consultants will be an adequate or successful solution to maintaining public confidence and the integrity of the Canadian immigration system by ensuring applicants and

¹ Standing Committee on Citizenship and Immigration, *Report 11 - Starting again: Improving government oversight of immigration consultants* (June 16, 2017), available [online](http://ow.ly/1V2S30h6keW) (<http://ow.ly/1V2S30h6keW>). The Honourable Ahmed Hussen, Minister of Immigration, Refugees and Citizenship, *Government Response*, (October 16, 2017), available [online](http://ow.ly/tPnT30h6kih) (<http://ow.ly/tPnT30h6kih>).

newcomers to Canada are properly protected. Instead, we propose an alternative and more cost-effective solution, which would serve to better protect this vulnerable group of people.

Two Failed Attempts at Regulating Consultants

Immigration consultants have now failed in two attempts to establish an effective regulatory body, first with the Canadian Society of Immigration Consultants (CSIC), and now through the Immigration Consultants of Canada Regulatory Council (ICCRC). Meanwhile, consultants have proliferated, with increasing concerns over professional admission standards and training. In 2010 there were 1,600 CSIC members – there are now over 4,000 ICCRC members.

The number of complaints against consultants also continues to grow. In March 2016, ICCRC reported an astonishing total of 2,585 complaints since its inception in 2011 – 1,470 complaints against registered members, and 1,115 against non-members.² A November 2017 ATIP request for copies of all complaints sent by IRCC to provincial law societies and the ICCRC revealed a significant number of complaints, egregious and otherwise, against immigration consultants – and no complaints against lawyers.³

The Parliamentary Committee's recommendation for a government-regulated body is not a viable solution to the problem of incompetent and unscrupulous immigration consultants. There are two reasons why government regulation is not the answer. First, establishing a new regulator for immigration consultants at significant public expense would place the federal government in an actual or at least perceived conflict of interest, and could raise constitutional issues related to the regulation of professions. Second, it would not address the underlying reason why the regulation of consultants is simply not working. Immigration law is a complex and technical area of law that changes frequently and intersects with a number of other areas of law.

We encourage the government to simplify processes and modernize client services as much as possible, however some of the complexity in the legislation is necessary to balance the important policy objectives in section 3 of IRPA and cannot be removed. It is not uncommon for issues to arise during an application that require a lawyer to ensure that procedural and substantive rights of the applicant are protected. These might include, for example, medical, criminal and security inadmissibility issues, or protection of the *Canadian Charter of Rights and Freedoms*.

The government has a duty to protect the public, and errors made by representatives can have dire consequences for applicants and newcomers to Canada. These clients represent a highly vulnerable group of people, and this is not an area of law where unsupervised consulting work is appropriate.

A Need for Immediate Interim Action

While the CBA Section appreciates that the government recognizes the complexity of this issue, and is taking time to carefully consider and analyze the Parliamentary Committee's recommendations, we also urge that immediate steps be taken to protect applicants and newcomers to Canada in the interim.

² Immigration Consultants of Canada Regulatory Council, *Registrar Update Complaints and Professional Standards as of 31 March 2016*, (March 2016), available [online](http://ow.ly/tuO630aleC6) (<http://ow.ly/tuO630aleC6>).

³ Meurrens on Immigration, *IRCC Complaints About Immigration Consultants* (November 16, 2017), available [online](http://meurrensonimmigration.com/) (<http://meurrensonimmigration.com/>)

Simply continuing to monitor the performance of ICCRC while engaging in public outreach to encourage the public not to use unauthorized consultants and file complaints, as well as referring complaints about unauthorized consultants to CBSA where appropriate, is not sufficient. Members of Parliament are overwhelmed with complaints about immigration consultants, law offices are inundated with cases stemming from negligent representation by consultants, and neither the RCMP nor CBSA have adequate funding to investigate.

Some recommendations from the Parliamentary Committee's Report can, and should, be implemented as quickly as possible. These include, for example, recommendation 19 and 21, to provide adequate funding to CBSA, the RCMP, and provincial and municipal police forces for the enforcement and investigation of violations of section 91 of IRPA.

The government should also immediately restrict appearances before the Immigration and Refugee Board (IRB) to lawyers, as is the case in the *Federal Court Rules*. Immigration consultants who lack litigation training and experience continue to appear before the IRB causing considerable harm. Paul Aterman, Deputy Chair of the Immigration Appeal Division of the IRB noted in his appearance before the Committee that, "*there is a big distinction between the litigation work we see... [lawyers undergo] a more rigorous regime than the one that's expected of immigration consultants...*"⁴

Similarly, in a recent IRB Immigration Appeal Division (IAD) decision on a sponsorship appeal from October 11, 2017 a Panel Member observed, "*...when counsel for the appellant demonstrates a level of incompetence that has such a profound negative effect upon the appellant's right to a fair hearing that the result is a denial of natural justice, then it is appropriate for and Immigration Appeal Division (IAD) Member to intervene and order a hearing de novo. This appeal is one of those exceptional situations.*" The appellant's representative was a registered consultant.

A Practical and Cost Effective Solution: Supervision of Consultants by Lawyers

The CBA Section continues to recommend that the most effective way to address the issue of incompetent and unscrupulous consultants, and to protect the public by ensuring that applicants are represented in a professional and ethical manner, is to amend IRPA so that only lawyers and Quebec notaries are authorized to act as paid representatives. This would eliminate confusion by ensuring that the public and IRCC could easily recognize and distinguish authorized counsel from unauthorized consultants.

There are good reasons to limit the practice of immigration law to lawyers and Quebec notaries. These include a proven track record of self-regulation; rigorous professional, educational and training standards; as well as effective complaint, discipline and enforcement mechanisms. Lawyers can often save clients years of time, money and disappointment with competent and ethical representation, and can also offer solicitor-client privilege.

Canada's immigration lawyers are more accessible and affordable than ever before. The immigration bar is large – for example, there are over 1,000 CBA Section members across the country – and is culturally and linguistically diverse. To promote access to justice, most lawyers offer free initial consultations and practice on a fixed-fee basis, and their fees can be assessed. Lawyers also offer *pro bono* legal services in times of need, and legal aid may be available to those who qualify. Law societies offer public services, such as referral services and victim compensation funds.

⁴ House of Commons Standing Committee on Citizenship and Immigration, *Evidence, Meeting Number 060, 1st Session, 42nd Parliament* (March 6, 2017), available [online](http://ow.ly/AUBa30e9c5P) (<http://ow.ly/AUBa30e9c5P>).

Lawyers, who are ultimately responsible to their law societies, could then supervise certified immigration consultants working as specialized non-lawyer staff in law firms. Where the law society permits multidisciplinary practices, consultants could also enter into partnerships with lawyers – with lawyers maintaining effective control over the practice and ultimately responsible for compliance with law society rules. Many registered consultants already work with lawyers in these types of arrangements.

We suggest a two-year transition period, during which the government would need to work closely with stakeholders to determine how this could best be implemented in each jurisdiction. During this period, IRPA would be amended so that only lawyers and Quebec notaries are authorized to act as paid representatives. ICCRC would be replaced by a professional certifying body, which is unregulated, but would ensure high education and training standards for immigration consultants.⁵ This certification would increase the marketability of immigration consultants when starting (or continuing) their careers under the supervision of a lawyer.

This approach would allow immigration consultants to continue working, while protecting the public and maintaining access to justice. It is a practical and cost effective solution that requires minimal legislative amendments, and avoids the considerable public costs of establishing a new government regulator. Applicants would have reliable access to competently delivered immigration services by having consultants perform work under the supervision of lawyers.

The CBA Section has been a key stakeholder at the table, working collaboratively with the government in discussions on immigration consultants for over 20 years. We request that the government carefully consider our recommendations, and include us in any discussions leading to a solution on this issue.

Yours truly,

(original letter signed by Kate Terroux for Barbara J. Caruso)

Barbara J. Caruso
Chair, CBA Immigration Law Section

Cc: Rev. Dr. Robert Oliphant, M.P., Chair, Citizenship and Immigration Committee

⁵ See for example, The Society of Trust and Estate Practitioners, *STEP Canada's Certificate in Estate and Trust Administration*, available [online](http://ow.ly/tZIX30h6krf) (<http://ow.ly/tZIX30h6krf>) Law Clerks working in law firms in the area of Wills and Estates may obtain The Society of Trust and Estate Practitioners (STEP Canada) Certificate in Estate and Trust Administration (CETA).